

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

Bosnia and Herzegovina
Council of Competition

Number: 01-04-26-002-14-II/06
Sarajevo, 22 November 2006

Pursuant to Article 25, paragraph(1), item e), Article 43, paragraphs (2) and (3), in connection with Articles 4, paragraph (1), item b), of the Act on competition («Official Gazette of BiH», No. 48/05), and Article 193, paragraph (2) of the Law on Administrative procedure («Official Gazette of BiH», No. 29/02 and 12/04) in the proceedings initiating on the basis of the Request of the company for production and trade of goods and services «Flor» d.o.o. Čelinac, headquartered in Čelinac Gornji-Babići, Čelinac municipality, represented by Živko Vujičić, a director of the company, received and registered under the No. 01-04-26-002-II/06 on 28 March 2006, against the Assembly of the City of Banja Luka, headquartered in Banja Luka, Trg Srpskih vladara 1, represented by Ljilja Dabić, a secretary of the Assembly of the City of Banja Luka and Budimir Balaban, a head of the Department for Utility and Housing services of the City of Banja Luka, the Council of Competition in its 36th (thirty-sixth) session held on 22 November 2006, has adopted

DECISION

1. It is established that the Assembly of the City of Banja Luka, in sense of Article 2 of the Act on Competition, as a local self-government organ indirectly influences the market enabling by its Regulation on changes and amendments to a Regulation on cemeteries and funeral service («Official Gazette of the city Banja Luka», No. 02/05) the dominant position to ODKJP »Gradsko Groblje» (a City cemetery) Banja Luka, and it pursuant to Article 4, paragraph (1), item b) of the Act on Competition prevents, restricts and distorts the market competition in the relevant market of transport services of remains and services of preparation of remains for interment within the territory of Banja Luka city.
2. The Assembly of the City of Banja Luka is ordered to change or to abolish, within six months from the date of receipt or the day of publication of this Decision, Article 1 of the Regulation on changes and amendments to a Regulation on cemeteries and funeral service («Official Gazette of the city Banja Luka», No. 02/05) in order to enable other undertakings providing the funeral services to have equal access to the market of transport service of remains and service of preparation of remains for interment within the territory of Banja Luka city.
3. The Assembly of the City of Banja Luka is ordered to submit a new or changed Regulation on cemeteries and funeral service to prove that the order from the point 2 of this Decision is carried out.
4. This Decision shall be published in «Official Gazette of BiH» and in official gazettes of Entities and Brčko District of Bosnia and Herzegovina.

Exposition

The company for production and trade of the goods and services «Flor» d.o.o. Čelinac, Gornji-Babići, Čelinac municipality, represented by Živko Vujičić (hereinafter: the company «Flor») submitted to the Council of Competition a Request No. 01-04-26-002-II/06 on 28 March 2006 on initiation of the proceedings against the Assembly of the City of Banja Luka, in other words that was a request in the name of Request for protection of the monopoly caused by the decision of the Banja Luka city No. 33-3/06 from 14 March 2006.

The Council of Competition did not accept the request as completed and adequate in sense of Article 28, paragraph (3) of the Act on Competition because it was not precisely stated what was a subject matter on which the infringement of the Act on Competition is related to. The Council of Competition informed the applicant about that by means of the act No. 01-04-26-002-1-II/06 on 17 April 2006.

The company «Flor» has submitted on 03 May 2006 a rider to the request No. 40-04/06 dated on 26 April 2006 where it is precisely stated that the subject matter of the Request is infringement of the Article 4 of the Act on Competition.

The Council of Competition has issued on 05 June 2006 a Receipt on received completed and adequate request No.: 01-01-26-002-3-II/06, and it has adopted on 21 June 2006 under No.: 01-01-26-002-5-II/06 a Resolution authorizing the initiation of the proceedings for infringement of Article 4, paragraph (1), item b) of the Act on Competition.

The Applicant states that the company «Flor» deals with production of equipment for funerals and provides a funeral services, produces funerary monuments, interior decorations and other stone coverings in finalization constructions, and that it is very competitive company in the market owing to its qualitative products and funeral services. The Applicant states that the company «Flor» won in 2002 the tender declared by Clinical Centre of Banja Luka for recovering and equipment the Institute for Pathology and a tender declared by Association of Retired persons for the most advantageous supplier of the funeral equipment and services for deceased members of the association.

According to the statement given by the company «Flor», the Assembly of the City of Banja Luka by its Regulation on changes and amendments to the regulation on cemeteries and funeral service («Official Gazette of the city Banja Luka», No. 22/04) and Regulation on changes and amendments to a Regulation on cemeteries and funeral service («Official Gazette of the city Banja Luka», No. 02/05) infringes Article 4 of the Act on Competition because those regulations provide a monopoly protection to ODKJP «Gradsko groblje» («City cemetery») Banja Luka. The Request also has stated that all persons who need the funeral equipment and services are forced to use the services of «Gradsko groblje» («City cemetery») Banja Luka for higher prices and unfavorable conditions because the market competition is totally excluded and that it is contrary to Article 10 of the Act on Competition.

The Applicant precises that the mentioned regulations of the Assembly of the City of Banja Luka regulate that remains of a person who died within the territory of Banja Luka are to be transported to mortuary of the public utility company exclusively by vehicle owned the public utility company.

It is also stated that Article 1 of the Regulation on changes and amendments to a Regulation on cemeteries and funeral service («Official Gazette of the city Banja Luka», No.02/05) is contrary to Articles 50, 51, 52, 53 and 54 of the Constitution of the Republic of Srpska.

The Council of Competition on 21 June 2006 by means of an act No. 01-04-26-002-9-II/06 informed the Assembly of the City of Banja Luka on initiation of proceedings against it and submitted attached a Request for initiation of the proceedings and Resolution authorizing the initiation of proceedings. The Council of Competition stated that the response to the submitted documents is awaited.

In its response the Assembly of the City of Banja Luka explains that it is as local self-governing organ responsible for providing organized carrying out of utilities services such as funeral service and to prescribe by means of its regulations the conditions and methods of doing it and that the municipality, in other words the town, may for the purpose of providing utility service and other services of the public interest found the public utility company such as O.D.J.K.P. «Gradsko groblje» («The City cemetery») Banja Luka and that the said competences is based on Articles 1 and 2, paragraphs (1), (3), (6) and (7). The Assembly of the City of Banja Luka cites that the Regulation on cemeteries and funeral service is a general act of the local community and that the Council of Competition is not competent to assess whether it is harmonized with the Act on Competition; the constitutional courts in Bosnia and Herzegovina, in this case it is a Constitutional Court of Republic of Srpska, are authorized to assess the legality of regulations and other general acts.

The Council of Competition analyzed the Request, Respond to the Request and other submitted evidences, arranged a meeting on 19 July 2006 in the premises of the company «Flor» and Assembly of the City of Banja Luka with its representatives in order to provide better explanation of all evidences and it made an official report about that.

As the factual situation is not disputable to the opposed parties in the proceedings but only its explanation, The Council of Competition has decided not to carry out the hearings proceedings on this case, pursuant to Article 39, paragraph(2) of the Act on Competition.

Pursuant to the Regulation on the Definition of a Relevant Market («Official Gazette of BiH», No.18/06) it is determined that the relevant market for the case concerned is a market of transport service of remains and preparation of remains for burial within the territory of the city of Banja Luka

In the course of the proceedings, the Council of Competition has ascertained the following facts:

- The Assembly of the City of Banja Luka is competent, pursuant to the Law on Utility Services to provide organized carrying out of the utility services and to prescribe conditions and methods for performing those services (Article 3 of the Law on Utility Services). But Articles 19 and 20 of the Law on Utility Services invoked by the city of Banja Luka to pass the disputable Regulation on changes and amendments to a Regulation on cemeteries and funeral services («Official Gazette of the city Banja Luka», No. 02/05) regulate the cemeteries and related activities but not services of transport of remains from the pathology to mortuary and lying the remains out and prepare for burial.
- The Act on Competition in Article 2, paragraph (1), item b) stipulates that the act shall apply to state and local self-government organs when they participate directly or indirectly or influence the market and when they by their activities prevent restrict and distort market competition in the entire territory of Bosnia and Herzegovina or its significant part.

- When the disputable Regulation, precisely saying Article 1 of the Regulation was adopted there were more funeral directors (39- according to the registry of the Institute for Pathology, submitted by the Market Inspectorate of the City of Banja Luka) dealing with transportation of remains from the Clinical Centre of Banja Luka to the place of burial and therefore there were many funeral directors that were preparing deceased for burial.
- The company «Flor», until the passing of the disputable Regulation, carried out the service of transport and preparation of deceased at very competing costs and quality in the funeral service market.
- The company «Flor» is registered in the Municipal Court registry in Banja Luka under No. U/I-1827/04 from 2 September 2004 and it has a Decision No. 02/2-018-39/04 from 2 August 2004 issued by Municipality of Čelinac on fulfillment of legal conditions regarding the technical requirements, labour and environment protection and other conditions required for authorization on carrying out the funeral services, transport and preparation of deceased stipulated by the law.
- Article 1 of the Regulation on changes and amendments to a Regulation on cemeteries and funeral services («Official Gazette of the city Banja Luka», No. 02/05) is contrary to Article 4, paragraph (1), item b) to the Act on Competition. The said Article 1 of the Regulation stipulates that a body of a person died within the territory of the city Banja Luka is to be, when the cause of death is determined, transported by the vehicle of the public utility company which carries out the funeral services and to the mortuary of the public utility company which carries out the funeral services, where the remain is placed until the burial or transport to another cemetery. The Assembly of the City of Banja Luka by this Regulation, effected from 29 March 2005, allows, i.e. strengthens the dominant position of the public utility company ODKJP «Gradsko groblje» («City cemetery») Banja Luka, founded by the city Banja Luka, and thereby it prevents, restricts and distorts the competition in the service market of transport and preparation of deceased for burial in the territory of Banja Luka city as a relevant geographic market.

Considering one part of the Request regarding Article 6 of the Regulation on changes and amendments to a Regulation on cemeteries and funeral services («Official Gazette of the city Banja Luka», No. 22/04) which stipulates that the body of a person died within the territory of Banja Luka city, when the cause of death is determined and when a notice of burial is issued, is to be placed in mortuary until the burial or transport to another cemetery, no infringement of the Act on Competition is found because it stipulates no restriction to the market.

The part of the Request regarding the conformity of the Regulation on changes and amendments to a Regulation on cemeteries and funeral services («Official Gazette of the city Banja Luka», No. 22/04) and Regulation on changes and amendments to a Regulation on cemeteries and funeral services («Official Gazette of the city Banja Luka», No. 02/05) with the Constitution of Republic of Srpska is not in competence of the Council of Competition; it is competence of the Constitutional Court of Republic of Srpska.

Considering all relevant facts and evidences the Council of Competition decides as it is in enacted form of this Decision.

LEGAL REMEDY

This Decision is final and no appeal is allowed against it. Unsatisfied party shall be entitled to bring an administrative dispute before the Court of Bosnia and Herzegovina within thirty days (30 days) from the date of acceptance of this Decision, i.e. from the date of its publication in the Official Gazette of BH.

President

Gordan Raspudić